

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed June 10, 2004. At the time of the Office Action, Claims 1-18 were pending in the Application. Applicant amends Claims 1-2, 4-10, and 12-18 and cancels Claims 3 and 11 without prejudice or disclaimer. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Priority

The Examiner questions the priority claimed by Applicant for the pending case. Applicant has amended the title page of the patent application in order to indicate that the pending case is a "Continuation application." This clarification has addressed the Examiner's concern and resolved the issue relating to the request to correct filing receipt identified by the Examiner.

In the Drawings

The Application was filed with informal drawings that are acceptable for examination purposes. Formal drawings for the Application have been appended to this Response. Applicant has also amended FIGURE 1 to include a "PRIOR ART" legend as suggested by the Examiner. Applicant submits that the formal drawings do not add any new matter to the Application and are in full compliance with 37 U.S.C. §1.81, §1.83, and §1.84.

Section 112 Rejections

The Examiner rejects Claims 1-16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has made a series of amendments to the claims in order to address the Examiner's concerns.

Section 102 Rejections

The Examiner rejects Claims 1, 5, 8, 9, 13, and 16 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,269,404 issued to Hart (hereinafter “*Hart*”). This rejection is respectfully traversed for the following reasons. As amended, Independent Claim 1 recites a method that includes: “a first tier of forwarding agents coupled to a client via a network, wherein the client is operable to generate a request that includes a packet; a second tier of forwarding agents connected to a plurality of network devices; and a service manager configured to: receive the packet from a selected one of the forwarding agents included in the first tier of forwarding agents.” The service manager is also operable to send a first tier instruction and a second tier instruction in order to affect routing of the packet.

Applicant respectfully reminds the Examiner that in order for a claim to be anticipated, each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See §MPEP 2131.) Using this rationale, *Hart* cannot inhibit the patentability of the pending claims because *Hart* fails to offer any system that provides for two tiers of forwarding agents, as well as an ability to communicate with selected forwarding agents with multiple instructions that affect routing of a packet propagating through the forwarding agents. The Examiner has failed to cite any portion of *Hart* that offers disclosure even remotely relevant to this subject matter.

Accordingly, Independent Claim 1 is patentable over *Hart* for at least this reason. Additionally, Independent Claims 9, 16, 17, and 18 include a similar limitation (but not identical) and, thus, are also allowable over *Hart* for similar reasons. In addition, the corresponding dependent claims associated with these Independent Claims are also patentable over *Hart* for analogous reasons.

Section 103 Rejections

The Examiner rejects Claims 2, 3, 10, and 11 under 35 U.S.C. §103(a) as being unpatentable over *Hart* in view of U.S. Patent No. 6,141,749 issued to Coss (hereinafter “*Coss*”). The Examiner rejects Claims 4 and 12 under 35 U.S.C. §103(a) as being unpatentable over *Hart*, as applied to Claims 1-3 and 9-11 above, and further in view of U.S. Patent No. 6,006,264 issued to Colby (hereinafter “*Colby*”). The Examiner rejects Claims 6-7 and 14-15 under 35 U.S.C. §103(a) as being unpatentable over *Hart* in view of well-

establishing teaching in art. These rejections are respectfully traversed for the following reasons.

Applicant notes that the Examiner has failed to satisfy each of the elements of non-obviousness, which are required to support a proper §103 analysis. According to MPEP §2143, to establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the prior art combination of references must teach or suggest all the claim limitations. (See generally MPEP §2143.) As an initial matter, the Examiner has failed to meet his burden with respect to the third criteria of non-obviousness, as none of the references cited by the Examiner include the limitation identified supra with respect to the proffered §102 analysis.

Accordingly, these rejected claims are also allowable over the references cited by the Examiner based on, at least, this reason. Neither *Coss*, nor any other cited reference, offer any additional subject matter that is combinable with *Hart* in order to inhibit the patentability of the pending claims. This is because none of these references teach, suggest, or disclose providing two tiers of forwarding agents, as well as an ability to communicate with selected forwarding agents with multiple instructions that affect routing of a packet propagating through the forwarding agents. Because the above-identified Independent Claims include this limitation, any combination of the cited references would fail in the context of any type of rejection (i.e. a §102 or a §103 rejection). Hence, for at least this single reason, the pending claims are allowable over the cited references.

Thus, all of the pending claims have been shown to be allowable. Notice to this effect is respectfully requested in the form of a full allowance of the pending claims.

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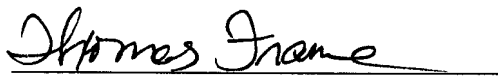
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas Frame at 214.953.6675.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicant

  
Thomas Frame  
Reg. No. 47,232

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Customer No. **05073**